United Nations CERD/C/CZE/CO/8-9/Add.1

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
8 May 2014

English only

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined eighth and ninth periodic reports of the Czech Republic

Addendum

Information received from the Czech Republic on follow-up to the concluding observations*

[Date received: 24 March 2014]

Introductory notes

1. Following the discussion of the 8th and 9th periodic report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CZE/8-9) (hereinafter the "Report" and the "Convention" respectively) by the Committee on the Elimination of Racial Discrimination (hereinafter the "Committee") on 18 and 19 August 2011, the Committee adopted the concluding observations (CERD/C/CZE/CO/8-9). In point 28 of those observations, the Committee asked the Czech Republic to provide information within one year on the way it fulfilled the recommendations included in paragraphs 11, 12 and 19.

2. The text below contains the Czech Republic's statements regarding the mentioned observations. Each statement is preceded by a quote of the appropriate observation/recommendation.

Recommendation no. 11

The Committee remains concerned at the possibly limited effectiveness of the Government's response to some of the decisions and acts of local and regional authorities taken while exercising devolved powers, especially where such acts had involved evictions or other limitations of the rights of vulnerable groups, the organization of local minority committees or the allocation of resources and housing including to the Roma community (arts. 2 and 5).

* The present document is being issued without formal editing.

The Committee recommends that the State party take effective measures to ensure that the principle of self-governance and devolution of powers does not impede implementation of its international human rights obligations of promoting rights of groups vulnerable to racial discrimination, particularly their economic, social and cultural rights.

Statement:

3. Although the municipal and regional self government is guaranteed directly by the Constitution[1], this doesn't mean that the municipalities and regions can do as they please. Municipalities and regions have a legally defined authority of self-government[2] as well as a transferred authority in the area of state administration[3] and during its execution they are bound by law and in many cases by sub-legal regulations.[4] When executing their local and state administration or any other activity, the municipalities and regions must also respect the constitutional order, including the Charter of Fundamental Rights and Freedoms and international treaties, which are part of the legal system.[5] Among these is also the Convention.

4. The municipalities and regions are also bound by the Anti-discrimination Act, which, among others, prohibits discrimination based on race in areas of employment, entrepreneurship, social welfare and security, health care, education and provision of goods and services, if these are offered to the public.[6] Therefore, if the municipality offers rental housing, it has to offer them and conclude rental contracts in a non-discriminatory way and in no way can it discriminate anyone based on his race or due to other reasons. The renting of municipal flats is regulated, as in other cases, by the regulation of tenancy in the Civil Code, including reasons and procedures for its termination; therefore the municipalities are subject to the same rules as other landlords, again with the prohibition of discrimination on racial or other grounds.[7] The municipality therefore cannot terminate someone's tenancy or evict him based on other than legal reasons.

5. The right of self-government includes the right to decide on affairs defined as an independent authority, free from the state's influence.[8] The municipality in the independent authority on its territory cares for the creation of conditions to satisfy the needs of its citizens in accordance to local conditions. These are for example housing, social care, health protection and development, education, cultural development and protection of the public order.[9] The municipality cares for these needs according to the consideration of its bodies; however, it must respect its role as a public corporation,[10] which is obliged, within its powers, to take care of its citizens, i.e. persons with permanent residence in its territory, in accordance with their fundamental rights and freedoms and principles of legitimacy of

---

[1] Article 8 and Chapter 7 of the Constitution.

[2] Article 104, para. 1, of the Constitution, section 35 and following, of the Act on Municipalities, section 14 and following, of the Act on Regions.

[3] Article 105 of the Constitution, section 61 and following, of the Act on Municipalities, section 29 and following, of the Act on Regions.

[4] Section 35, para. 3, and section 61, para. 2, of the Act on Municipalities and section 16 and 30 of the Act on Regions.

[5] Article 10 of the Constitution.

[6] Section 1, para. 1, of the Anti-discrimination Act.

[7] Section 685 and following, of the Civil Code.

[8] Section 35 of the Act on Municipalities and section 14 of the Act on Regions.

[9] Section 35, para. 2, of the Act on Municipalities.

[10] Article 101, para. 3, of the Constitution, section 2, para. 1, of the Act on Municipalities and section 1, para. 2, of the Act on Regions.

public administration.[11] The municipalities should therefore make maximum effort to ensure that their citizens are able to satisfy their needs in local conditions and cooperate with them to create measures which lead to the satisfaction of their needs. In this regard they can be influenced primarily by their citizens during the elections to local councils or in other ways.

6. In case of the municipal and regional administration, the state supervises that the listed needs of their citizens are being satisfied in accordance with the law and that they can financially, methodologically or in other way support these activities; however, the state cannot fully take over their function. Therefore the state cannot order that there should be a certain amount of flats, school or social facilities in a certain municipality. It can only support the municipality, if it wishes to create these. The state doesn't renounce its responsibility to ensure and protect human rights, because it still provides the general legal framework for the execution of the given activities. In accordance with the principle of self-government and decentralization of public administration, it just enables the execution of certain activities at the local level in smaller units, which, due to the knowledge of local conditions, are able to better judge how to perform them in order to ensure public good. This approach is common in the majority of democratic countries.

7. The supervision of the municipality's or region's activities is performed by the Ministry of Interior, which can suspend the effect of a generally binding decree as a legal regulation of a municipality or region in independent authority or any other resolution, decision or measure of the municipality or region, which are in conflict with the law or other legal regulations. If the region or municipality doesn't rectify this situation, the Ministry of Interior will file a petition with the court to cancel the given regulation. In the case of generally binding decrees as legal regulations, the decision on their cancellation falls to the Constitutional Court. The same applies in case the decree, resolution, decision or other measure is in conflict with human rights and fundamental freedoms, constitutional order or with binding international treaties.[12] The supervision of the Ministry of Interior doesn't apply only in the case when the municipality or region acts as a private person according to the regulations of the civil, commercial or labour law.[13] In that case, the decision on the infringement doesn't fall to the courts in administrative proceedings, based on the Ministry of Interior's petition, but to civil courts in civil proceedings, based on the petition of the injured party.[14] Therefore, e.g. if the municipality sets discriminatory criteria for the renting of municipal flats and approves them as its decree or resolution, the Ministry of Interior will perform supervision and eventually will file a petition with the court to cancel these rules. However, if it only refuses to rent the flat to someone based on a discriminatory reason, the injured party must defend itself in civil proceedings according to the Anti-discrimination Act or Civil Code with an action to desist from discrimination, removal of its consequences and adequate satisfaction or financial compensation of immaterial harm.[15]

8. Apart from ensuring the legal framework and financial aid, the state provides also methodological help to the municipalities and regions. An example of this help is e.g. the operation of the Agency for Social Inclusion, which is part of the Section for Human Rights of the Office of the Government led by the Government Commissioner for Human Rights.

---

[11] See decisions of the Constitutional Court (e.g. file No. IV. ÚS 576/2000) and the Supreme Court (e.g. file No. 28 Cdo 3297/2008).

[12] Section 123 and following of the Act on Municipalities and section 81 and following of the Act on Regions.

[13] Section 124, para. 6, of the Act on Municipalities and section 82, para. 6, of the Act on Regions.

[14] Section 7, para. 1, of the Civil Code.

[15] Section 13 of the Civil Code and section 10 of the Anti-discrimination Act.

The Agency's goals are to improve the quality of life of people in socially excluded Roma localities, stop their growth and contribute to the full integration of their citizens into the society and to ensure fair access of all people to education, housing, healthcare, employment, social services and security. The Agency, as a team of experts, creates and helps to realize models of social work and social inclusion. The Agency provides expert counselling and helps the municipalities with social inclusion. The municipalities can use its services for their own community planning and to help satisfy the needs of their citizens and can familiarize themselves with examples of good practice. The municipalities can cooperate with the Agency in local partnerships together with NGOs, authorities, schools, police and other subjects on projects of municipal development and citizen integration, and, with the Agency's help, apply for donations for these projects from the EU structural funds. Since its establishment in 2008, the Agency has cooperated with 33 municipalities and localities.

Recommendation no. 12

The Committee expresses its concern regarding the persistent segregation of Romani children in education as confirmed by the decision of the European Court of Human Rights of 2007 and the 2010 report of the Czech School Inspection Authority. The Committee is concerned with reports that the practice of linking social disadvantage and ethnicity with disability for the purposes of school-class allocation has continued, not removed by recent regulations. Furthermore, some amendments to regulatory decrees which take effect in September 2011 may reinforce discrimination against Romani children in education and that practical changes which will benefit Romani children under the Government National Action Plan for Inclusive Education are only envisaged from 2014 onwards (arts. 3 and 5).

In line with its previous concluding observations and general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to eliminate any discrimination or racial harassment of Romani students and prevent and avoid the segregation of Romani students, while keeping open the possibility for bilingual or mother-tongue tuition.

The Committee recommends that the State party take concrete steps to ensure effective de-segregation of Romani children and students and to ensure that they are not deprived of their rights to education of any type or at any level. The Committee also recommends that the State party undertake full consultation with Roma stakeholders with regard to education and in order to promote awareness of Roma rights and enhance their capacities to address the discrimination they experience including in education and by school authorities.

Statement:

9. In relation to the ruling of the European Court of Human Rights in the case *D.H. and Others* v. *the Czech Republic*, the National Action Plan of Inclusive Education was adopted in 2010.[16] The goal is to increase the rate of inclusive education and act preventively against the social exclusion of individual and social groups. Included in the Plan are also measures leading to the change in the system of pedagogic-psychological counselling with emphasis on socioculturally sensitive diagnostics of the needs of children with special educational needs in cooperation with social counselling and the system of checks and reviews of diagnoses, in accordance with the child's development.

[16] Government Resolution No. 206 of 15 March 2010.

10. In order to fulfill the plan, changes of the School Act and its implementing decrees have been prepared with regard to the pedagogic-psychological counselling and education of children with special educational needs. The decree on pedagogic-psychological counselling rules the provision of counselling services.[17] The recommendation to place the pupil in a school or program for pupils with disabilities can be issued for a maximum period of one year.[18] The recommendation, including the proposals for adjustments in the pupil's education, are discussed with the pupil's legal representative in such a way that he understands the nature and contents of the recommendation and can raise possible objections to it. Pupils and their parents must be informed about their right to demand another counsel at any time.

11. The Decree on education of children with special educational needs[19] stipulates a balancing measure for pupils with a physical or social disadvantage,[20] which should serve to balance their disadvantage so that they can receive education in mainstream schools and classes.[21] The Decree also defines support measures for pupils with disabilities.[22] The prerequisite to place a pupil into special education is always the recommendation of the school counselling facility, together with the proposal of concrete supportive measures, discussion of the recommendation with the pupil and his parents, including the provision of comprehensible instructions, and the informed consent of the parents.[23] A pupil without disabilities shall not be educated according to that educational program, which is adjusted to the needs of pupils with disabilities. A pupil without a disability, who is disadvantaged socially or in terms of health and has long-term problems coping with the mainstream education, can be temporarily educated in a class established for pupils with disabilities, however, according to the standard educational plan of a mainstream education school.[24] His stay in that class is restricted to a period of 5 months, whereas he remains a pupil of his former school and is under the supervision of a pedagogic-psychological counselling service, which recommends further steps in education and checks whether the reasons for the special educational regime still apply. Education is therefore always provided based on the expert assessment of the pupil's needs and the informed consent of his legal representatives.

---

[17] Decree No. 72/2005 Coll., on provision of counseling services at schools and school counseling facilities, as amended by decree No. 116/2011 Coll., effective since 1 September 2011.

[18] The amended decree shifts the base of counseling services from reports in the sense of diagnostic activity to recommendations in the sense of counseling activity, which should take into consideration the special educational needs of a pupil.

[19] Decree No. 73/2005 Coll., on education of children, pupils and students with special educational needs and extraordinarily talented children, pupils and students, as amended by decree No. 147/2011 Coll., effective since 1 September 2011.

[20] With regard to balancing measures a socially disadvantaged pupil is mainly a pupil from an environment, where he doesn't have sufficient support for regular education, including cooperation of legal representatives with the school, and a pupil disadvantaged by an insufficient knowledge of the language used in education. See section 1, para. 6, of the Decree No. 73/2005 Coll.

[21] Especially the use of pedagogic and special pedagogic methods and processes, providing individual support within education and preparation for education, the use of school counseling services and school counseling facilities, individual education plans or the services of teacher's assistant.

[22] The use of special methods, procedures, forms and means of education, compensatory, rehabilitative and educational tools, special textbooks and didactic materials, inclusion of items of special pedagogic care, provision of pedagogic-psychological services, provision of the services of teacher assistants, reduction of the number of pupils in a class or study group or other adjustment of the organization of education taking into account the special educational needs of the pupil.

[23] Section 9, para. 1, of the Decree No. 73/2005 Coll.

[24] Section 3, para. 5, of the Decree No. 73/2005 Coll.

12. The decree further specifies some aspects of the basic education and newly enables the establishment of classes for children with special educational needs with lower than the official number of pupils, where they can be provided with adequate care. The pupil's personal background and his level of education shall also be significantly considered during the assessment of his educational results.

13. The plan also supports early care for children with social disadvantage and their families within kindergartens, which is aimed at the support of their access to preschool education. The aim is to support systematic development of all children's abilities, including language and communication skills and subsequent successful school education. The support is provided in the form of preparatory classes, increase in kindergarten capacities and development of professional competences of teachers to work with pupils of different educational needs. In this school year, there have been established 189 preparatory classes, where the parents pay no fees. A similar purpose is aimed at with the accessibility of after-school care for children from preparatory classes of elementary schools and special elementary schools, where they can gain and develop skills necessary for school education. The changes in the implementing decree stipulate obligations for the kindergarten headmasters to create conditions for the education of children with special educational needs according to their specific demands. The final year of kindergarten also remains free of charge. Children from families with low income can be exempted from all kindergarten fees. Teacher's assistants for pupils with social disadvantage are also supported.[25] In this school year there are a total of 458 teacher's assistants. Included in the support is the teaching of the Czech language.

14. The Ministry of Education, Youth and Sports tries to support the presented changes also by a methodological and educational guidance of teachers, headmasters, psychologists and other pedagogical workers in counselling facilities.[26] In 2011 and 2012, the Ministry organized a number of conferences and round tables about inclusive education in individual regionsas well as seminars for pedagogic workers. The Ministry also meets with representatives of individual regions responsible for school policies and with regional Roma coordinators. The Ministry published on its website explanations and commentaries to the new regulations. In 2010, the Methodological Recommendation to Ensure Equal Opportunities in Education of Socially Disadvantaged Children was issued, which is based on an analysis of diagnostic tools and includes a number of concrete recommendations to elementary schools and kindergartens on how to support the school education success rate of socially disadvantaged children and how to create an environment open to these children. In the area of diagnostics, it recommends concrete steps, which remove the risk of result distortion in the case of socially disadvantaged children.

15. Thanks to the project Centre for the Support of Inclusive Education and its regional centres, more than 200 elementary schools have been supported. In the school year 2010/2011, 130 schools took part in the project, where school psychologists and special pedagogues help pupils with their integration into the mainstream education. In the second phase of the project, methodological materials will be created aimed at the cooperation of the teacher and the teacher's assistant, school and out of school tutoring, individual educational plans, taking into consideration balancing measures, forms of cooperation with

[25] The support is provided mainly through the grant programs "Support for education in minority languages and multicultural education" and "Program of the Ministry of Education, Youth and Sports to Support the Integration of the Roma Community", which are funded from the state budget and the European Social Fund.

[26] See http://www.msmt.cz/file/1549_1_1/; http://www.vuppraha.cz/wp-content/uploads/2009/12/pripravna_trida.pdf; www.inkluzivniskola.cz .

the family based on the principles of social work, work with the class collective and the development of cooperation with other subjects.

16. The Czech Republic would like to mention that, due to the fact that the listed legislative changes entered into force only on 1 September 2011, i.e. the beginning of this school year, their effect would be manifested more significantly at the start of the next school year (i.e. 1 September 2012), at the earliest. A higher quality assessment of these measures will prove more successful the more times the measures are implemented and show their possibilities in practice. Therefore, it is still too early to form concrete conclusions about their success or failure. The Ministry of Education, Youth and Sports tasked the Czech School Inspection to investigate the results of the said changes. The Inspection will check 41 former special elementary schools, where, in 2010, shortcomings were found in the area of special education regarding the placement of pupils in relevant educational programs. It will also aim at all practical elementary schools and school counselling facilities to see how they coped in practice with the above listed changes in regulations, especially with the obligation of informed counsel, provision of adequate information to children and their parents about procedures and results of investigations, in terms of recommendations for further education of the child and the observation of periods for review of the recommendations and diagnoses. The results of these investigations are expected during the summer of 2012 and shall be published in autumn.

17. The possibility of teaching the Romani language shall be offered in schools as a complementary optional subject, as it is with the other less taught foreign languages. The decision is fully within the competence of the school headmaster and is dependent only on the demand from the pupils, students and their parents as well as the school's possibilities. The Romani language is not in the same position as other foreign languages, be it German, French, Russian or some other less taught foreign language, because Romani has been used in many dialects and for a long time, its standard form hadn't been codified. Therefore the experts within the Council of Europe focused mainly on the support of the language itself. A Curriculum Framework for Romani was prepared. In the first phase, the Ministry of Education, Youth and Sports shall offer the schools in localities with a significant representation of Roma pupils a Romani seminar for teachers and a methodology of how to teach the language. Seminars in localities with a significant representation of the Roma population will be prepared in cooperation with experts in Romani studies. In the next phase, the Ministry shall support the education of Romani at schools and educational centres, which will have adequate personnel – qualified Romani teachers.

Recommendation no. 19

The Committee remains concerned about the issue of sterilization of Romani women without their free and informed consent. While welcoming the regret expressed by the authorities in Resolution 1424 of November 2009 and the decision of the Supreme Court of June 2011 that would waive the statute of limitations, the three-year statute of limitation still remains for these cases and obstructs full reparation and compensation of victims (arts. 2, 5 and 6).

The Committee recommends that the State party use the recent decision of the Supreme Court to facilitate full reparation and compensation for Romani women victim to unlawful sterilization, give consideration to ex gratia compensation procedures, generate awareness among patients, doctors and the public on the guidelines of the International Federation of Gynecology and Obstetrics and put in place safeguards to avoid similar incidents in the future. The Committee recommends that the State party consider legislating for a permanent waiver to limitation on all cases relating.

Statement:

18. A complex regulation regarding the performance of sterilizations is included in the new Act on Specific Health Services, effective April 2012. It is based on the informed written consent of the patient. Sterilization therefore cannot be performed without the patient's consent. In the case of underage patients or patients without legal capacity, the sterilization can be performed only due to health reasons and with the consent of the patient's legal representative, an expert commission and the court. The patient must always be informed about the nature of the medical procedure, its permanent consequences and possible risks. The patient has a period of at least 7 days to evaluate the advantages and risks of the procedure. The consent form must include information on the purpose, nature, expected benefit, consequences and possible risks of the procedure, as well as about the alternatives, possible future restrictions and strain on the organism, treatment regime and suitable preventive measures. The form also includes brief information about the anatomy of internal sex organs. Part of the informed consent is the statement of the physician that he informed the patient about the procedure, and the statement of the patient that he has been informed about the procedure and possible complications. The informed consent is signed by the physician, patient and possibly a witness. The form is also translated into Romani. The Ministry of Health also supports public awareness about the patients' rights as well as education of doctors in this area.

19. In case of an illegal interference with personal rights by performing sterilization, the victim can claim compensation for infringement of personal rights, including financial compensation. According to the judicature, such claims were originally considered imprescriptible.[27] In 2008, the courts changed the legal interpretation[28] and the financial compensation as well as any other financial claims has been considered subject to a common civil statutory limitation period of three years since the harm has been suffered.[29] Since then, the claims for financial compensation of immaterial harm have been rejected if they had been lodged after the expiry of the limitation period. The Constitutional Court adjusted this general procedure so that the objection of limitation must be considered in terms of good manners – i.e., whether the participant had in any way caused the lapse of his right – and the lapse of his claim would not give rise to too harsh of a penalty considering the circumstances of his case.[30] Due to this reason, the Supreme Court rejected the objection of limitation in a case of illegal sterilization in 2011, and based on that decision the patient received compensation.[31]

20. The government, as the executive power, cannot in any way influence the independent courts. Their decisions can only have the power of precedent in relation to the standing of individual courts. The decisions of the Supreme Court are binding for the lesser courts in given cases, and the legal opinions expressed in them are binding even for the Supreme Court itself, if its Grand Chamber doesn't decide otherwise.[32] The decisions of the Constitutional Court are binding for all bodies and persons[33], whereas only the Plenum of the Constitutional Court is competent to change the opinion the Constitutional Court

[27] Ruling of the Supreme Court File No. 30 Cdo 1542/2003 of 25 September.2003.

[28] Ruling of the Grand Chamber of the Supreme Court file No. 31 Cdo 3161/2008 of 12 November 2008.

[29] Section 100, para. 2, and section 101 of the Civil Code.

[30] Findings of the Constitutional Court file No. II. ÚS 3168/09 of 5 August 2010 and II. ÚS 635/09 of 31 August 2010.

[31] Ruling of the Supreme Court file No. 30 Cdo 2819/2009.

[32] Section 14, para. 3, and section 20, para. 1, of the Act No. 6/2002 Coll., on Courts and Judges, as amended.

[33] Article 89, para. 2, of the Constitution.

Chamber.[34] The mentioned decisions of the Supreme and Constitutional Courts are therefore binding for lesser courts, which should apply these in other similar cases regarding compensation for illegal sterilizations.

21. As for the possibility to change the legal regulation of statutory limitation, in 2011, the government tasked the Ministry of Justice to prepare an expert study by the end of 2012 about the issue of the three-year statutory limitation period and propose possible solutions.

22. At the beginning of 2012, the Government Council for Human Rights, an advisory body in the field of human rights, adopted a motion in which it recommended to the government to compensate women who have been illegally sterilized. The ex gratia compensation should apply to women whose sterilization prior to 1991 had been motivated by the social care, and also to women for whom the sterilization was the responsibility of the medical facility where the procedure was performed, and who had no possibility of demand compensation via legal proceedings, due to the lapse of the statutory limitation period. In relation to the motion, the Government Council for Human Rights proposed to the government to prepare a draft compensation mechanism. The motion is now being discussed by the government and has not yet been approved. Therefore the motion is not binding for the Czech government and the procedure in cases of compensation for sterilized women is yet to be decided on.

23. Apart from the ex gratia compensation, the Council proposed to the government also that it help sterilized women with their so far unexpired claims for compensation and that the Ministry of Justice publish recommendations and possibilities of access to free legal counsel. In that regard, the government prepared a new complex system of access to legal aid and counsel. In its motion, the Council proposed to the Ministry of Health to also adopt a recommended procedure regarding the performance of sterilizations and to publish it in its journal.

---

[34] Section 23 of the Act No. 182/1993 Coll., on the Constitutional Court, as amended.